

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Richard Fernbach,

Petitioner,

v.

Case No. 1:22cv646

Hamilton County Sheriff of Ohio, *et al.*,

Judge Michael R. Barrett

Respondents.

ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) filed by the Magistrate Judge on February 9, 2023 (Doc. 12).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties may forfeit rights on appeal if they failed to file objections to the R&R in a timely manner. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). No objections to the Magistrate Judge’s R&R (Doc. 12) have been filed and the time to do so has expired.

Accordingly, it is **ORDERED** that the R&R (Doc. 12) of the Magistrate Judge is hereby **ADOPTED**. Consistent with the recommendation by the Magistrate Judge, Petitioner’s pro se petition for a writ of habeas corpus is **DISMISSED** without prejudice to refiling after petitioner has exhausted all available state court remedies. In light of the above decision, the plaintiff’s motion for default judgment (Doc. 8) is **DENIED as moot**.

A certificate of appealability will not be issued, for the foregoing reasons, petitioner has not made a substantial showing of the denial of a constitutional right that is remediable at this juncture in this proceeding. See 28 U.S.C. § 2253(c); Fed. R. App.

P. 22(b).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons an appeal of any Order adopting this Report and Recommendation would not be taken in “good faith” and therefore **DENIES** plaintiff leave to appeal *in forma pauperis*. See *McGore v. Wigglesworth*, 114 F.3d 601 (6th Cir. 1997).

IT IS SO ORDERED.

s/Michael R. Barrett
Michael R. Barrett, Judge
United States District Court